
(1952) 04 MAD CK 0002
In the Madras High Court
Case No : Appeal No. 821 of 1950

V.S. Subramania Chettiar and Another	APPELLANT
Vs	
State of Madras	RESPONDENT

Date of Decision : 10-04-1952

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 25, 25(2), 9

Citation : AIR 1953 Mad 943 : (1953) 66 LW 487 : (1953) 2 MLJ 568

Hon'ble Judges : Krishnaswami Nayudu, J;Govinda Menon, J

Bench : Division Bench

Advocate : V. Radhakrishnayya and B.C. Seshachala Ayyar, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

Krishnaswami Nayudu, J.—This appeal is against the judgment in O. P. No. 51 of 1949 of the Subordinate Judge of Vellore on a reference

u/s 19, Land Acquisition Act 1 of 1894 in respect of acquisition of certain lands belonging to the appellants.

2. The appellants were the owners of lands of the extent of 8 acres and 40 cents in Kalinjur village near Vellore town, North Arcot district. By

notifications made in October 1948, and published in the Gazetts, the Government notified the land as one which would be acquired. The land is in

proximity with the Katpadi Vellore Cement road. Notices under Sections 9(3) and 10, Land Acquisition Act were issued calling upon the

appellants to put in a statement in writing showing the nature of their interest in the lands and the amount of compensation for such interest with

particulars and to appeal in person on 30-11-1948 before the Special Deputy Collector for Land Acquisition, Vellore. The appellants acquired the

lands sometime in 1946 for the purpose of construction of a bungalow and

putting up an oil mill for which necessary licences Were issued by the District Board authorities and plans for the construction of factories were also approved by them. On 30-11-1948, appellant 1 made a statement (Ex. B. 3) almost similar in terms to the one made by him earlier before the Revenue Inspector on 17-8-1948. Appellant 1 stated that he wanted the land for constructing a bungalow for his own use & for starting an oil mill and therefore he was not then willing to state anything about the rate, for the land. There is a mistake in the English translation of the statement furnished to Court, as the translation reads ""Hence 1 am not willing to state anything about the rate for this land"", whereas a reading of the original statement in Tamil would show that the word ""now"" is omitted in the translation and the translation should be ""Hence I am not "now" willing to state anything about the rate for this land"".

3. On 30-11-1948, the Special Deputy Collector adjourned the enquiry to 21-12-1948 for pronouncing the award. On that date, the Officer pronounced the award fixing the value at Rs. 5088-2-10 including the 15 per cent, solatium assessed at the rate of Rs. 450 per acre. The first appellant presented a petition u/s 18 of the Act asking that the matter of compensation payable may be referred to the determination of the Court. The lower Court held on the evidence adduced before it that the compensation awarded was low, that the property must have been valued at Rs. 4250 per acre instead of Rs. 450, but that the appellants were not entitled to the increase by reason of their having refused or omitted, without any sufficient reason to make a claim before the Acquisition Officer as required u/s 9, Clause (2) and that, by reason of such failure, Section 25(2) of the Act was a bar to any increase in their claim. The lower Court on this ground rejected the reference.

4. Notice under Sections 9 and 10 has been duly served and the notice requires that the claimant should state the amount and particulars of their claims to compensation, and, admittedly, the amount of the compensation was not given as required, as the statement made by the appellant before the Land Acquisition Officer on 30-11-1948 shows that he did not give any particulars; but he stated that he was not then willing to state anything about the rate for the land. His attitude, as could be seen from the statement, was that he required the land for the purpose of constructing a

bungalow and starting an oil mill, for which he had already obtained the necessary sanctions and licences, and in his view the question of going into compensation did not arise at that stage. He also states in the petition u/s 18 of the Act that he was under the impression that no award would be passed before the representation to the Government was finally disposed of and that he should specify the exact amount of compensation payable to him only in the event of an adverse order being passed and communicated to him by the Government on his above representation, and that having thus not been aware, or made aware, of the correct position the "bona fide contented himself with stating that his land was, in fact, very valuable.

Earlier, appellant 1 sent a communication to the Board of Directors of the Katpadi Cooperative Township Ltd., for whom the Government was

acquiring the land for laying out a housing scheme stating that he has already made arrangements for the construction of the factory, that he will be

put to heavy loss, if the land was to be acquired, and requesting them to exclude this land from the scheme area. This communication was

transmitted to the Special Deputy Collector for Land Acquisition, Vellore, who returned the same with the endorsement dated 16-11-1948

mentioning that the stage of objections was gone, that it was open to the Township to withdraw the acquisition and that it was for the directors to

dispose of the request. The Secretary of the Cooperative Society by his endorsement dated 17-11-1948 intimated to the party that the Directors

do not propose to give up the location of the scheme including the area belonging to the"" appellants. Appellant 1 appears to have approached the

Government for withdrawing the notification and on 11-12-1948, he sent a petition to the Honourable Minister for Housing, copies of which were

sent to the Board of Revenue and other authorities, requesting for a withdrawal of the notification in so far as the appellants' properties were

concerned.

5. It is for consideration whether, in the circumstances, it could be held that the appellants are barred under the provisions of Section 25(2) from

having the benefit of the increased valuation fixed by the Subordinate Judge. Section 25 consists of three parts and we are now only concerned

with clauses (2) and (3) and they are as follows ;

Clause 2 : ""When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such

claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector."" Clause 3 : When the applicant has omitted

for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be s less than, and may exceed, the amount awarded by the Collector.

The learned Subordinate Judge found that the claimants have not shown that they had any reason, still less sufficient reason, to omit to make their

claim or to furnish particulars in their statement before the Acquisition Officer, and relying on two decisions in --" Chigurupati Subbanna Vs. The

District Labour Officer, , and the --"Secy, of State v. Bishan Dat", 33 All 376 (B), held that that omission absolutely precluded the claimants from

claiming the excess amount, which they Would otherwise be entitled.

6. If the Court is satisfied that the appellants have omitted for sufficient reason to make such claims, the amount awarded may be even exceeded

by Court and should not in any event be less than the amount awarded by the Collector." The attitude of the appellants in this case has been to

endeavour by making representations to thp authorities concerned to retain the property than allowing it to be acquired and their anxiety to so

retain it is supported by the fact that the appellants purchased this property for a specific purpose of installing a, factory for which, they had already

obtained the licence and permits, and there is no reason to disbelieve appellant 1 when he stated that he had also acquired the necessary materials

and machinery; and in view of that anxiety to retain the property and the hope of their succeeding in their attempts, they have not specified the

amount of the claim as required under the notice issued in pursuance of Section 9 of the Act. Appellant 1 therefore stated that he was not then

making a claim, making it clear, that he was not giving up mentioning the exact amount which he would be entitled to, but only postponing it in the

hope of the Government reconsidering the question regarding acquisition. Excepting receiving the statement, it does not appear that the Acquisition

Officer informed the appellants, who it may be stated had not the assistance of any counsel but appeared in person before the Acquisition Officer -

- that failure to state the amount of the claim would, under the provisions of the

Land Acquisition Act, disentitle them from having the amount of the award raised in any subsequent reference before the Court. The appellants are merchants certainly not aware of the provisions of the Act and the implications of the failure on their part to strictly comply with the notice u/s 9 and, in such circumstances, it has to be considered whether the penal provisions of Section 25(2) should be strictly applied.

7. In --" N.M. Venkatarama Iyer Vs. Collector of Tanjore, , a Bench of this Court consisting of Beasley C. J. and Curgenven J. held that a notice fixing a shorter term is in contravention of the statute and consequently defective and the stringent provisions of Section 25(2) of the Act cannot be applied to the omission of the occupier to make his claim after such a defective notice. Curgenven J. in the course of his judgment observed that, apart from the insufficiency of the notice, there was another sufficient reason for not making the claim and stated as follows :

When he, (claimant), appeared, the Labour Officer took an oral statement from him, which, had it comprised the necessary particulars, would have amounted to making a claim. It may be taken, I presume, that the Labour Officer knew what those particulars should be, and in particular that they should have included the applicant's own valuation of his property. The Officer must be taken to have known also the penalty to which the applicant subjected himself by not furnishing this information. Did he explain to the applicant that it was necessary that he should put a price on his land and the consequences to him of the failure to do so? If not, may it not be said that he allowed the applicant to go away in the belief that he had complied with the requirements of the Act, and that the adoption of such a course provided the applicant with sufficient reason for not having complied with them? On this ground too, I think the applicant should not be precluded by the terms of Section 25(2) from questioning the Labour Officer's valuation.

8. We may ask the Acquisition Officer, as Curgenven J. pointed out in the decision above cited, as to whether he "explained to," the appellants that it was necessary under: ""the provisions of the Statute that they should put a price on the land and the consequences to him of the failure to do so? This becomes necessary especially when parties, whose lands are acquired against their will have to face an enquiry, where the Acquisition

Officer proceeds to value the land, the parties having a wrong but bona fide impression that by making a claim they would lose "the chance of

having the acquisition proceedings withdrawn in pursuance of their appeals to the higher authorities. It is, therefore, desirable and sometimes even

necessary, though it is not so required under the Act, that Acquisition Officers should in a proceeding as to valuation make it clear to the owners of

lands that any failure to state the amount of the claim would be a bar to their having a chance of the award being revised in their favour by the

Court. In this case, there is no doubt that the appellants were not informed of the implications of a failure to state the amount of the claim at the

enquiry before the Acquisition Officer on 30-11-1943. It cannot therefore be a refusal to make such a claim or an omission without sufficient

reason. The appellants stated why they were not making a statement as to the claim at that juncture and it could not be taken as a refusal. But

would it not be a sufficient reason for the omission to make such a claim? Section 25 being a penal provision must be applied only in cases where

there is clear and convincing proof of a deliberate refusal or an omission without justifiable reason, or a failure to make such a claim after having

been made aware of the consequences of such a refusal or omission.

9. In --"Ranchhodlalji v. Acquisition Officer Ahmedabad", AIR 1945 Bom 49 (D), where a notice u/s 9 of the Act was sent by registered post

and served on the agent, who happened to be a constituted attorney of the claimant, and where the agent was dismissed on account of

mismanagement, it was held that it was probable that the claimant was not aware of the receipt of the notice and it was ""sufficient reason"" for

omitting to make a claim. Though the facts of this case are not similar to that case, we may usefully adopt the tests that were applied by the learned

Judges in that case. What was found necessary by the learned Judges in that case was the presence of good faith and the absence of negligence,

and we entirely agree with them that these are the two ingredients in ""sufficient reason"".

We have no hesitation in holding that the appellants acted in good faith throughout and were in no sense negligent, the good faith consisting in their

bona fide belief that no award would be passed before the representation to the Government was finally disposed of and that they could thereafter

specify the exact amount. There is no negligence in as much as they appeared before the Acquisition Officer and objected to the acquisition and even earlier appeared before the Revenue Inspector and stated their objections. There is neither negligence nor want of good faith. We are satisfied that their omission to state the claim was for a sufficient reason and the view of the learned Subordinate Judge cannot be upheld. They will, therefore, be entitled to the benefit of an enhanced value that may be fixed by the Court.

10. On behalf of the Government Pleader, it is urged that the valuation put up by the learned Subordinate Judge is excessive and is not in accordance with the principles which should guide in valuing these lands. The property is described by the Acquisition Officer as---. follows :

There is a pit measuring (90 x 80") 7 cents in the northern portion. It is about 4" deep. The soil of this portion is "kalar". There is a shallow "kuttai" in the south western corner of the field and also a big round well. The well is very old and requires repairs. It is not in use now. Out of the entire extent of 8.40 acres, only an extent of 2-00 acres is arable. The remaining extent is covered by the pit, "kuttai", and mamool waste which is of pebbles and "kalar" soil. In fasli 1356 well paddy was raised on an extent of 2-00 acres. In fasli 1357 paddy was raised on the above extent with the aid of the water from the "kuttai".

11. From this description it will be seen, that out of 8-40 acres only a portion is cultivable and paddy was raised in the land. Before the learned Subordinate Judge the only two documents of sales of lands in the vicinity-filed were Exs. A. 1 and A. 2. They were sales, of February 1947, and in those documents the prices ranged from Rs. 8571 to Rs. 13559 per acre, averaging to about Rs. 10000 per acre. The Government did not adduce evidence of any sales in the vicinity but contented itself with filing a field map of the village. Though in the sale deeds the average price per acre was Rs. 10000, the learned Subordinate Judge, taking into consideration certain factors, fixed the price at Rs. 4250 per acre.

12. The contention on behalf of the Government is that the lands must have been valued as agricultural lands and this principle should have been adopted by the Acquisition Officer and the potential value of these lands as building sites or for industrial purposes should not have been taken into

account. For this contention, they relied on a judgment of Rajamannar C. J. and Panchapakesa Ayyar J-in --"Lakshminarasimha v. Revenue

Divisional Officer, Mangalore", AIR 1949 Mad 002 (E), where one of the questions that was considered was about the adequacy of the

compensation and there the lands comprised about 25 acres and 10 cents of wet, dry and garden lands in the village of Jeppinamogru adjoining

Mangalore town and the acquisition, was for the agricultural department to open a paddy breeding station. The question that arose was as to

whether the capitalised value at 20 years" purchase or 33-1/3 year"s purchase should be arrived at and it was held that for the valuation of lands,

no question of a multiple of over 20 has ever been adopted for capitalisation, and with reference to a contention on behalf of the claimant that at

least for the dry land, which had been valued as potential building sites, the valuation may be made at more than 20 years" purchase, the learned

Judges observed :

But these lands were ordinary dry lands at the time of the acquisition though they had a potential value as available for building purposes. We do

not think that a different rule should be applied to these lands,

Relying on these observations it is contehded that the potential value of the lands for building purposes should not be taken into account. But we

consider, that it has been established in a number of decisions of our High. Court and by the Privy Council that in arriving at the market value, the

potential value for building and other purposes may also be taken into account. Venkatasubba Rao J. in -- Thareesamma and Others Vs. The

Deputy Collector and Others, 3 following the observation of Ccckburn C. J. -in the --"Queen v Brown", (1867) 2 QB 630 (G), viz., that

A jury may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which

in the course of events at no remote period it may be applied

held that :

Where land is acquired under the Land Acquisition Act, its owner is entitled to the value obtainable in open market for the land if put to its most

lucrative use. In, assessing the compensation the Court may take into consideration not only the present purpose to which the land is applied, but

also any other more beneficial purpose to which in the course of events, it might,

within a reasonable period, be applied. The special adaptability of land for building purposes is an element to be taken into consideration in fixing the compensation.

13. In -- AIR 1939 98 (Privy Council) Lord Romer considered as to what is the market value of the land u/s 23 of the Act and laid down the principles for determining compensation under the Land Acquisition Act. The principles of English decisions have been held to be applicable to proceedings under the Indian Act. It was observed that the compensation must be determined therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser and not the price that would be paid by a "Driven purchaser" to an unwilling vendor. Lord Romer observed: "It is perhaps desirable in this connection to say something about this expression "the market price." There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can, also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by "the market value" in Section 23. But sometimes it happens that the land to be valued possesses some unusual, & it may be, unique features as regards its position, of its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use of which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification u/s 4(1), but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self evident one. No one can suppose in the case of land which is certain, & even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is

being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural

land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account.

14. The property in appeal has a road front in the Kangayanallore road and it is separated only by one plot of land from the main Katpani Cement

road which connects it with the Kangayanallore road and the land which separates belongs to the Municipality and there are bungalows, oil-mills,

decorticators and rice mill of P. W.2 on the other side of the road & by the side of these buildings there are also shops. This will be sufficient,

apart, from the fact that it is adjacent to a Municipality and has a road front, to hold that the land is being capable of being used as building site and

it is also an industrial area. To ignore these facts would be to ignore the real value of the property, it may be that on the relevant date, that is the

date of the notification, which is 5-10-1948, the land as such was not used as a building site and no buildings were there and in fact a portion of the

land was only used for cultivable purposes. On that ground, it could not be valued only as an agricultural and waste land. The locality in which the

land is situated, its adaptability for being used for purposes other than for agriculture, the locality being in proximity to a prosperous town, and the

reasonable probability, and, in this case, the reasonable certainty, of its being utilised for building a factory should not be left out of account, if the

correct value has to be arrived at for this land. It will be unsafe and unjust to value these lands purely as agricultural lands ignoring the peculiar

advantages, which they possess, added to the fact that already in and around the vicinity buildings and some factories have grown up. These must

be considered to be what is generally described as the potential value of the land. The potential value could not be based on any speculation or

conjecture as to the likelihood of the use to which the land may be put to at a distant future, but when there is a reasonable possibility of the land

being used for purposes other than agriculture, those purposes could not be ignored in assessing its value. The potential value could not therefore

be ignored. In view of the decisions referred to" and our own view as to how lands have to be assessed in order to arrive at the market value, we

are unable to agree with the learned Counsel for the Government that dry lands, though they have a potential value as building sites, should be

valued on the basis of capitalisation of the income of these lands We may observe that in --AIR 1949 Mad 902 (E)," the question that really arose

for determination was whether 20 years" purchase or 33-1/3 years" purchase should be adopted in arriving at the capitalised valuation and the

decisions-now referred to have not been placed for consideration of the learned Judges in that decision.

15. A further argument was also advanced that the lower Court should not have placed reliance on Exs. A. 1 & A. 2, which were dated 7-2-1847

and came into existence just sometime before the Government Order 603, Revenue, sanctioning the Katpadi Housing Scheme which was

published on 17-2-1947, the suggestion being that coming to know of the Housing-Scheme, the prices in the said sales might have been inflated. It

is not, however, suggested that these two sale deeds are not genuine transactions. The relevant date being only October 1948, which is the date of

the notification, the market value u/s 23(2) has to be-fixed as on that date and sales prior to that date would be relevant for consideration in

arriving at the correct value. We consider that the lower Court has rightly relied upon the sale deeds as representating the value of the lands in the

locality.

16. But the question still remains for consideration whether the value of Rs. 4250 per acre fixed by the learned Subordinate Judge is not excessive.

While accepting the sale deeds as indication of the prices prevailing in the locality, which is one of the accepted basis for valuation, the learned

Subordinate Judge differentiates them from the suit properties & arrives at a reduced valuation. While the properties covered by Exs. A-1 & A-2

have a fronta-age in the Katpadi Cement road, the lands in question have no such frontage, but have a frontage in the Kangayanellore road.

Secondly, while the vendors in Exs. A. 1 and A. 2 had already made the lands suitable as building sites incurring the necessary expenses, the lands

of the appellants have only a potentiality as building sites, but have not been reclaimed or made fit as building sites. Thirdly, these lands being

situated a little interior not all of them would abut the Kangayanellore road. The learned Subordinate Judge has, therefore, taken about 50 per cent,

of the value mentioned in Exs. A. 1 and A. 2 as the value of the lands in question. We are of opinion that the learned Judge has, apart from the

factors which he has stated, which certainly go to a great extent in treating these lands differently .from the lands covered by Exs. A. 1 and A. 2

failed to give due consideration for certain other factors pertaining to these lands. Though the extent is 8 acres and 40 cents, there is a pit (90 "x

80") of the extent of about 7 cents and the pit is 4 feet deep, and there is also a shallow "kuttai" or pond on the south-western corner of the field.

These two portions of land require to be filled up and raised, which would involve some cost, when alone the entire extent could be reasonably fit

for factory or building sites. If these circumstances are also taken into consideration along with the factors relied on by the learned Subordinate

Judge, the market value has still further to be reduced.

Taking all the circumstances into consideration, the locality, the nature of the land, the use to which it is at present put to and the potential value of

the land as building sites, we consider that a valuation of Rs. 2000 (Rs. two thousand) per acre would be reasonable. We, therefore, fix the market

value of the land at Rs. 2000 (Rs. two thousand) per acre and the appellants would be entitled to be paid at the rate. The appellant will also be

entitled to the 15 per cent, solatium under 3. 23 and interest at 6 per cent, per annum from 12-2-1949.

17. Subject to the modification as to the value, the appeal is allowed with proportionate costs here and the Court below.